

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SW/Corner of Trenton Mill Road		
and Thomas Shilling Court	*	DEPUTY ZONING COMMISSIONER
5th Election District		
3rd Councilmanic District	*	OF BALTIMORE COUNTY
<b>(5201 Trenton Mill Road)</b>		
	*	CASE NO. 03-332-SPH
Jane A. Mauser & Joan A. Oeffner		
<i>Petitioners</i>	*	

\* \* \* \* \*

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Revised Petition for Special Hearing filed by Jane A. Mauser and Joan A. Oeffner requesting special hearing relief for property located at 5201 Trenton Mill Road in the northern area of Baltimore County. The subject property is zoned R.C.2. The revised special hearing request is pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), for approval of (1) the redistribution of density from one parcel to another separate parcel of same ownership without creating any additional density and (2) for the creation of 2 non-density parcels totaling 1.995 acres, more or less, by metes and bounds.

The property was posted with Notice of Hearing on September 2, 2003, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 2, 2003 to notify any interested persons of the scheduled hearing date.

### Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of

any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

### **Zoning Advisory Committee Comments**

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: (1) ZAC comment dated September 16, 2003 from the Department of Environmental Protection & Resource Management (DEPRM), a copy of which is attached hereto and made a part hereof.

### **Interested Persons**

Appearing at the hearing on behalf of the requested special hearing relief were Douglas C. Myers and J. M. Simons. The Petitioners were represented by Lawrence Hammond, Esquire. Also in attendance were several citizens from the surrounding community who signed in on the Citizen's Sign-In Sheet; namely, Brian Chapline, Marty Bement and Dorothy Rowland. Timothy Roche, an adjacent property owner who had retained J. Carroll Holzer, Esquire as his attorney, also attended the hearing. Mr. Holzer was unable to attend the hearing due to a conflict in schedule. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

### **Testimony and Evidence**

Testimony and evidence was proffered by Attorney Hammond, who explained that the property, which is the subject of this special hearing request, consists of two parcels. Parcel A, 16.384 acres, more or less, also designated on Tax Map 19 as Parcel 51, has 100% agricultural usage and all of this parcel is in Baltimore County. Parcel B is a much larger tract of 36 acres, more or less, which is primarily wooded and which lies partially in Baltimore County and Carroll County. The Petitioner indicates that 23.481 acres, more or less, lies in Baltimore County. Parcel B is likewise designated on Tax Map 19 as Parcel 33. Both parcels are zoned R.C.2. The

Petitioners are requesting that four (4) lots be created from the two parcels, with Parcel A being designated as Lot 1, and Lots 2, 3 and 4 being created from Parcel B.

The Petitioner testified that parcel A and parcel B were legally created before R.C.2 zoning was applied to the property (November 1979) and as such each parcel is entitled to two lots (two density units) for a total of four lots. They further request that one lot designation (density unit) be transferred from Parcel A to Parcel B resulting in three lots designated for Parcel B. See Petitioners' Exhibit No. 1. Finally, they request that 1.995 acres, more or less, be allowed to be created for the road access to Piney Branch Golf & Country Club, as well as lots they may develop in Carroll County. This would be a non density transfer.

A side issue arose at the hearing as to the proper line dividing Baltimore and Carroll County. Apparently, the County Attorneys of the respective Counties are involved in the controversy which likely will be resolved by the State Legislature. Final location of this line would directly affect the size of Lot 3 and perhaps the size of the non density transfer request. Dorothy Rowland, a neighbor, testified about her concerns with the proper dividing line between the Counties, and the impact the granting of the petition would have on the Joachim property. However, she had no objection to dividing the Baltimore County parcels into the four lots as requested, transferring one lot designation (density unit) from Parcel A to Parcel B or the non density transfer request to provide access to the country club.

Another issue arose in regard to adjacent landowners, Mr. and Mrs. Roche, and their concerns that their property be protected in case of further development of Lot 1. The Roches retained Carroll Holzer, Esquire to represent them, but Mr. Holzer was unable to attend the hearing due to conflicts in his schedule. However, the attorneys apparently have negotiated an agreement with the Petitioner such that the Petitioner and his successors will keep a 100 foot

buffer area along the boundary of Lot 1 and the Roche property. A draft agreement is found in Petitioners' Exhibit No. 3. Mr. Hammond agreed that if the draft agreement could not be concluded to everyone's satisfaction, the case could be reopened with additional testimony taken. He also agreed that the terms of the agreement would be incorporated into any final decision in this case. A final agreement dated October 3, 2003 was received and, as agreed, is hereby incorporated in the file.

### **Findings of Fact and Conclusions of Law**

I find, from the testimony and evidence, that the Petitioners were legally entitled to two parcels of land, Parcel A and Parcel B, prior to November 1979 as shown on Petitioners' Exhibit No. 1 and that they are entitled to four lots (density units) pursuant to Section 1A01.3.B. I further find that it is consistent with the spirit and intent of the R.C.2 zoning to preserve agricultural land, that one lot (one density unit) be transferred from Parcel A to Parcel B resulting in the density distribution shown on Petitioners' Exhibit No. 1. This will allow only one house to be built on Parcel A and the least disruption of Parcel A for use in agriculture. I also approve the non density transfer of 1.995 acres of land into two parcels for road, as shown on Petitioners' Exhibit No. 1, for the purpose of providing road access to the adjacent country club and homes in Carroll County. I find that the issue of the proper dividing line between Baltimore and Carroll Counties does not go to the essence of the request before me. Presumably, after due consideration, the State Legislature will determine the proper line. This may affect the actual size of Lot 3 and the roadway parcels, but not the density and non density transfers which are the subject of this hearing. Finally, I find that the agreement between Mr. and Mrs. Roche and the Petitioners concerning the 100 ft. buffer along their respective boundaries is fair, reasonable and with the intent of protecting the surrounding communities.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this \_\_\_\_ day of October, 2003, that the Petitioners' revised request for special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), for approval of (1) the redistribution of density from one parcel to another separate parcel of same ownership without creating any additional density and (2) for the creation of 2 non-density parcels totaling 1.995 acres, more or less, by metes and bounds, is hereby APPROVED under the following conditions:

1. That the terms of the Agreement between the Petitioners and Mr. and Mrs. Roche, as shown by their October 3, 2003 Agreement, attached hereto and made a part hereof, is hereby incorporated into this order and shall be enforceable by Baltimore County;
2. That if and when the final dividing line between Baltimore and Carroll Counties is determined by the State Legislature, that the dimensions of Lot 3 and the two roadway out parcels shall be suitably adjusted by administrative adjustment; and
3. That the comments from the Office of Planning and the Department of Environmental Protection and Resource Management, both dated September 16, 2003, are hereby incorporated in this Order.

          SIGNED            
JOHN V. MURPHY  
DEPUTY ZONING COMMISSIONER  
FOR BALTIMORE COUNTY

JVM:raj